

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

COHEN POOLED ASSET ACCOUNT,

61 ASSOCIATES LLC,

AMY S. COHEN,

LEON MEYERS,

LEON MEYERS TRUST,

HAROLD COHEN LIVING TRUST,

DAVID ZAHNER,

ELSA COHEN LIVING TRUST,

H & E COHEN FOUNDATION,

S.Z.,

P.Z.,

B.Z.,

FRANK NALEPKA,

Adv. Pro. No. 10-04371 (SMB)

S.N.,
A.N.,
JANET MEERBOTT,
KENNETH SADINOFF,
WILLIAM MEYERS, and
CECILIA SACHAROW,
Defendants.

**STIPULATION AND ORDER DISMISSING WITHOUT PREJUDICE
DEFENDANTS DAVID ZAHNER, WILLIAM MEYERS, CECILIA SACHAROW,
KENNETH SADINOFF, PERRY ZAHNER, BENJAMIN ZAHNER, AND SETH
ZAHNER**

WHEREAS, on November 30, 2010, Irving H. Picard (the “Trustee”), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et. seq.*, and the substantively consolidated estate of Bernard L. Madoff (“Madoff”) individually, filed a Complaint against David Zahner, William Meyers, Cecilia Sacharow, Kenneth Sadinoff, Perry Zahner, Seth Zahner and Benjamin Zahner, among others, in the above-captioned adversary proceeding (the “Adversary Proceeding”); and

WHEREAS, the Trustee alleged that the defendants in the Adversary Proceeding received certain avoidable transfers from BLMIS and/or recoverable subsequent transfers; and

WHEREAS, David Zahner, a defendant in the Adversary Proceeding, represents as follows:

1. I invested in 61 Associates LLC and/or 61 M Associates (collectively, “61 Associates”), which maintained an account with BLMIS under the name Cohen Pooled Asset

Account, and was aware that the money I invested in 61 Associates was, in turn, ultimately invested with BLMIS.

2. Between January 1997 and December 2008, I deposited a net total of \$794,185 with 61 Associates with the understanding and expectation that the money would be invested with BLMIS.

3. Between January 1997 and December 11, 2008, I withdrew a net total of \$655,997 from 61 Associates with the understanding and expectation that this money was withdrawn from BLMIS, such that my net deposits exceeded my net withdrawals.

4. Between December 2002 and December 11, 2008, I did not receive any transfers from BLMIS, 61 Associates or the Cohen Pooled Asset Account in connection with investments in BLMIS, other than the net transfers totaling \$655,997 withdrawn between January 1997 and December 2008.

5. I did not invest any money with BLMIS, the Cohen Pooled Asset Account or 61 Associates in connection with investments in BLMIS, other than the net deposit of \$794,185 I made between January 1997 and December 11, 2008.

WHEREAS, David Zahner represents that he has conducted a diligent search for any and all documentation he has related to his investment in 61 Associates; and

WHEREAS, in support of David Zahner's position, he has submitted the following documentation to the Trustee:

1. 1997 Account Statement issued by 61 Associates to David Zahner.
2. 1998 Account Statement issued by 61 Associates to David Zahner.
3. 1999 Schedule K-1 issued by 61 M Associates to David Zahner.
4. 2000 Schedule K-1 issued by 61 M Associates to David Zahner.

5. 2001 Schedule K-1 issued by 61 M Associates to David Zahner.
6. 2002 Schedule K-1 issued by 61 M Associates to David Zahner.
7. 2003 Schedule K-1 issued by 61 M Associates to David Zahner.
8. 2004 Schedule K-1 issued by 61 M Associates to David Zahner.
9. 2005 Schedule K-1 issued by 61 M Associates to David Zahner.
10. 2006 Schedule K-1 issued by 61 M Associates to David Zahner.
11. 2007 Schedule K-1 issued by 61 M Associates to David Zahner.
12. 2008 Schedule K-1 issued by 61 M Associates (Madoff) to David Zahner.
13. Canceled check dated November 4, 2008 for \$5000 made out to 61 Associates by David Zahner.

WHEREAS, William Meyers, a defendant in the Adversary Proceeding, represents as follows:

1. I invested in 61 Associates and was aware that the money I invested in 61 Associates was, in turn, ultimately invested with BLMIS.
2. Between January 2000 and December 11, 2008, I invested a total of \$300,000 with 61 Associates with the understanding and expectation that the money would be invested with BLMIS.
3. Between January 2000 and December 11, 2008, I did not withdraw any money or receive any transfers from BLMIS, the Cohen Pooled Asset Account or 61 Associates.
4. I did not invest any money with BLMIS, the Cohen Pooled Asset Account or 61 Associates, other than the \$300,000 I invested between January 2000 and December 11, 2008.

WHEREAS, William Meyers represents that he has conducted a diligent search for any and all documentation he has related to his investment in 61 Associates; and

WHEREAS, in support of William Meyers' position, he has submitted the following documentation to the Trustee:

1. 2003 Schedule K-1 issued by 61 M Associates to William Meyers.
2. 2004 Schedule K-1 issued by 61 M Associates to William Meyers.
3. 2005 Schedule K-1 issued by 61 M Associates to William Meyers.
4. 2006 Schedule K-1 issued by 61 M Associates to William Meyers.
5. 2007 Schedule K-1 issued by 61 M Associates to William Meyers.
6. 2008 Schedule K-1 issued by 61 M Associates (Madoff) to William Meyers.
7. 2000 Account Statement issued by 61 M Associates to William Meyers.
8. 2001 Account Statement issued by 61 M Associates to William Meyers.
9. 2002 Account Statement issued by 61 M Associates to William Meyers.
10. 2003 Account Statement issued by 61 M Associates to William Meyers.
11. 2004 Account Statement issued by 61 M Associates to William Meyers.
12. 2005 Account Statement issued by 61 M Associates to William Meyers.
13. 2006 Account Statement issued by 61 M Associates to William Meyers.
14. 2007 Account Statement issued by 61 M Associates to William Meyers.
15. 2008 Account Statement issued by 61 M Associates to William Meyers.

WHEREAS, Cecilia Sacharow, a defendant in the Adversary Proceeding, represents as follows:

1. I invested in 61 Associates and was aware that the money I invested in 61 Associates was, in turn, ultimately invested with BLMIS.

2. Between January 2001 and December 11, 2008, I deposited a net total of \$400,000 with 61 Associates with the understanding and expectation that the money would be invested with BLMIS.

3. Between January 2001 and December 11, 2008, I withdrew a net total of \$105,000 from 61 Associates, such that my net deposits exceeded my net withdrawals.

4. Between December 2002 and December 11, 2008, I did not receive any transfers from BLMIS, the Cohen Pooled Asset Account or 61 Associates, other than the net transfers totaling \$105,000 withdrawn between January 2001 and December 11, 2008.

5. I did not invest any money with BLMIS, the Cohen Pooled Asset Account or 61 Associates, other than the net deposit of \$400,000 I made between January 2001 and December 11, 2008.

WHEREAS, Cecilia Sacharow represents that she has conducted a diligent search for any and all documentation she has related to her investment in 61 Associates; and

WHEREAS, in support of Cecilia Sacharow's position, she has submitted the following documentation to the Trustee:

1. 2001 Account Statement issued by 61 M Associates to Cecilia Sacharow.
2. 2002 Account Statement issued by 61 M Associates to Cecilia Sacharow.
3. 2003 Account Statement issued by 61 M Associates to Cecilia Sacharow.
4. 2004 Account Statement issued by 61 M Associates to Cecilia Sacharow.
5. 2005 Account Statement issued by 61 M Associates to Cecilia Sacharow.
6. 2006 Account Statement issued by 61 M Associates to Cecilia Sacharow.
7. 2007 Account Statement issued by 61 M Associates to Cecilia Sacharow.
8. 2008 Account Statement issued by 61 M Associates to Cecilia Sacharow.

WHEREAS, Kenneth Sadinoff, a defendant in the Adversary Proceeding, represents as follows:

1. I invested in 61 Associates and was aware that the money I invested in 61 Associates was, in turn, ultimately invested with BLMIS.

2. Between January 1999 and December 11, 2008, I deposited a net total of \$250,000 with 61 Associates with the understanding and expectation that the money would be invested with BLMIS.

3. Between January 1999 and December 11, 2008, I withdrew a net total of \$45,000 from 61 Associates, such that my net deposits exceeded my net withdrawals.

4. Between December 2002 and December 11, 2008, I did not receive any transfers from BLMIS, the Cohen Pooled Asset Account or 61 Associates, other than the net transfers totaling \$45,000 withdrawn between January 1999 and December 11, 2008.

5. I did not invest any money with BLMIS, the Cohen Pooled Asset Account or 61 Associates, other than the net deposit of \$250,000 I made between January 1999 and December 11, 2008.

WHEREAS, Kenneth Sadinoff represents that he has conducted a diligent search for any and all documentation he has related to his investment in 61 Associates; and

WHEREAS, in support of Kenneth Sadinoff's position, he has submitted the following documentation to the Trustee:

1. 2002 Schedule K-1 issued by 61 M Associates to Kenneth Sadinoff.
2. 2003 Schedule K-1 issued by 61 M Associates to Kenneth Sadinoff.
3. 2004 Schedule K-1 issued by 61 M Associates to Kenneth Sadinoff.
4. 2005 Schedule K-1 issued by 61 M Associates to Kenneth Sadinoff.

5. 2006 Schedule K-1 issued by 61 M Associates to Kenneth Sadinoff.
6. 2007 Schedule K-1 issued by 61 M Associates to Kenneth Sadinoff
7. 2008 Schedule K-1 issued by 61 M Associates (Madoff) to Kenneth Sadinoff.
8. 1999 Account Statement issued by 61 M Associates to Kenneth Sadinoff.
9. 2000 Account Statement issued by 61 M Associates to Kenneth Sadinoff.
10. 2001 Account Statement issued by 61 M Associates to Kenneth Sadinoff.
11. 2002 Account Statement issued by 61 M Associates to Kenneth Sadinoff.
12. 2003 Account Statement issued by 61 M Associates to Kenneth Sadinoff.
13. 2004 Account Statement issued by 61 M Associates to Kenneth Sadinoff.
14. 2005 Account Statement issued by 61 M Associates to Kenneth Sadinoff.
15. 2006 Account Statement issued by 61 M Associates to Kenneth Sadinoff.
16. 2007 Account Statement issued by 61 M Associates to Kenneth Sadinoff.
17. 2008 Account Statement issued by 61 M Associates to Kenneth Sadinoff.

WHEREAS, Benjamin Zahner (identified as B.Z. in the Complaint), a defendant in the Adversary Proceeding, represents as follows:

1. Investments were made, on my behalf, in 61 Associates with the knowledge that the money invested in 61 Associates was, in turn, ultimately invested with BLMIS.
2. Between January 1998 and December 11, 2008, a total of \$28,901 was invested with 61 Associates with the understanding and expectation that the money would be invested with BLMIS.

3. Between January 1998 and December 11, 2008, neither I, nor anyone acting on my behalf, withdrew any money or received any transfers from BLMIS, the Cohen Pooled Asset Account or 61 Associates.

4. Neither I, nor anyone acting on my behalf, invested any money with BLMIS, the Cohen Pooled Asset Account or 61 Associates, other than the \$28,901 that was invested between January 1998 and December 11, 2008.

WHEREAS, Benjamin Zahner represents that he has conducted a diligent search for any and all documentation he has related to his investment in 61 Associates; and

WHEREAS, in support of Benjamin Zahner's position, he has submitted the following documentation to the Trustee:

1. 1999 Schedule K-1 issued by 61 M Associates to Benjamin Zahner.
2. 2000 Schedule K-1 issued by 61 M Associates to Benjamin Zahner.
3. 2001 Schedule K-1 issued by 61 M Associates to Benjamin Zahner.
4. 2002 Schedule K-1 issued by 61 M Associates to Benjamin Zahner.
5. 2003 Schedule K-1 issued by 61 M Associates to Benjamin Zahner.
6. 2004 Schedule K-1 issued by 61 M Associates to Benjamin Zahner.
7. 2005 Schedule K-1 issued by 61 M Associates to Benjamin Zahner.
8. 2006 Schedule K-1 issued by 61 M Associates to Benjamin Zahner.
9. 2007 Schedule K-1 issued by 61 M Associates to Benjamin Zahner.
10. 2008 Schedule K-1 issued by 61 M Associates (Madoff) to Benjamin Zahner.
11. 1998 Account Statement issued by 61 M Associates to Benjamin Zahner.
12. 1999 Account Statement issued by 61 M Associates to Benjamin Zahner.

13. 2000 Account Statement issued by 61 M Associates to Benjamin Zahner.
14. 2001 Account Statement issued by 61 M Associates to Benjamin Zahner.
15. 2002 Account Statement issued by 61 M Associates to Benjamin Zahner.
16. 2003 Account Statement issued by 61 M Associates to Benjamin Zahner.
17. 2004 Account Statement issued by 61 M Associates to Benjamin Zahner.
18. 2005 Account Statement issued by 61 M Associates to Benjamin Zahner.
19. 2006 Account Statement issued by 61 M Associates to Benjamin Zahner.
20. 2007 Account Statement issued by 61 M Associates to Benjamin Zahner.
21. 2008 Account Statement issued by 61 M Associates to Benjamin Zahner.

WHEREAS, Perry Zahner (identified as P.Z. in the Complaint), a defendant in the Adversary Proceeding, represents as follows:

1. Investments were made, on my behalf, in 61 Associates with the knowledge that the money invested in 61 Associates was, in turn, ultimately invested with BLMIS.
2. Between January 1998 and December 11, 2008, a total of \$34,035 was invested with 61 Associates with the understanding and expectation that the money would be invested with BLMIS.
3. Between January 1998 and December 11, 2008, neither I, nor anyone acting on my behalf, withdrew any money or received any transfers from BLMIS, the Cohen Pooled Asset Account or 61 Associates.
4. Neither I, nor anyone acting on my behalf, invested any money with BLMIS, the Cohen Pooled Asset Account or 61 Associates, other than the \$34,035 that was invested between January 1998 and December 11, 2008.

WHEREAS, Perry Zahner represents that he has conducted a diligent search for any and all documentation he has related to his investment in 61 Associates; and

WHEREAS, in support of Perry Zahner's position, he has submitted the following documentation to the Trustee:

1. 1999 Schedule K-1 issued by 61 M Associates to Perry Zahner.
2. 2000 Schedule K-1 issued by 61 M Associates to Perry Zahner.
3. 2001 Schedule K-1 issued by 61 M Associates to Perry Zahner.
4. 2002 Schedule K-1 issued by 61 M Associates to Perry Zahner.
5. 2003 Schedule K-1 issued by 61 M Associates to Perry Zahner.
6. 2004 Schedule K-1 issued by 61 M Associates to Perry Zahner.
7. 2005 Schedule K-1 issued by 61 M Associates to Perry Zahner.
8. 2006 Schedule K-1 issued by 61 M Associates to Perry Zahner.
9. 2007 Schedule K-1 issued by 61 M Associates to Perry Zahner.
10. 2008 Schedule K-1 issued by 61 M Associates (Madoff) to Perry Zahner.
11. 1998 Account Statement issued by 61 M Associates to Perry Zahner.
12. 1999 Account Statement issued by 61 M Associates to Perry Zahner.
13. 2000 Account Statement issued by 61 M Associates to Perry Zahner.
14. 2001 Account Statement issued by 61 M Associates to Perry Zahner.
15. 2002 Account Statement issued by 61 M Associates to Perry Zahner.
16. 2003 Account Statement issued by 61 M Associates to Perry Zahner.
17. 2004 Account Statement issued by 61 M Associates to Perry Zahner.
18. 2005 Account Statement issued by 61 M Associates to Perry Zahner.
19. 2006 Account Statement issued by 61 M Associates to Perry Zahner.

20. 2007 Account Statement issued by 61 M Associates to Perry Zahner.

21. 2008 Account Statement issued by 61 M Associates to Perry Zahner.

WHEREAS, Seth Zahner (identified as S.Z. in the Complaint), a defendant in the Adversary Proceeding, represents as follows:

1. Investments were made, on my behalf, in 61 Associates with the knowledge that the money invested in 61 Associates was, in turn, ultimately invested with BLMIS.

2. Between January 1998 and December 11, 2008, a net total of \$65,135 was deposited with 61 Associates with the understanding and expectation that the money would be invested with BLMIS.

3. Between January 1998 and December 11, 2008, a net total of \$20,934 was withdrawn, for my benefit, from 61 Associates, such that my net deposits exceeded my net withdrawals.

4. Between December 2002 and December 11, 2008, neither I, nor anyone acting on my behalf, received any transfers from BLMIS, the Cohen Pooled Asset Account or 61 Associates, other than the net transfers totaling \$20,934 withdrawn between January 1998 and December 11, 2008.

5. Neither I, nor anyone acting on my behalf, invested any money with BLMIS, the Cohen Pooled Asset Account or 61 Associates, other than the net deposit of \$65,135 that was made between January 1998 and December 11, 2008.

WHEREAS, Seth Zahner represents that he has conducted a diligent search for any and all documentation he has related to his investment in 61 Associates; and

WHEREAS, in support of Seth Zahner's position, he has submitted the following documentation to the Trustee:

1. 1999 Schedule K-1 issued by 61 M Associates to Seth Zahner.
2. 2000 Schedule K-1 issued by 61 M Associates to Seth Zahner.
3. 2001 Schedule K-1 issued by 61 M Associates to Seth Zahner.
4. 2002 Schedule K-1 issued by 61 M Associates to Seth Zahner.
5. 2003 Schedule K-1 issued by 61 M Associates to Seth Zahner.
6. 2004 Schedule K-1 issued by 61 M Associates to Seth Zahner.
7. 2005 Schedule K-1 issued by 61 M Associates to Seth Zahner.
8. 2006 Schedule K-1 issued by 61 M Associates to Seth Zahner.
9. 2007 Schedule K-1 issued by 61 M Associates to Seth Zahner.
10. 2008 Schedule K-1 issued by 61 M Associates (Madoff) to Seth Zahner.
11. 1998 Account Statement issued by 61 M Associates to Seth Zahner.
12. 1999 Account Statement issued by 61 M Associates to Seth Zahner.
13. 2000 Account Statement issued by 61 M Associates to Seth Zahner.
14. 2001 Account Statement issued by 61 M Associates to Seth Zahner.
15. 2002 Account Statement issued by 61 M Associates to Seth Zahner.
16. 2003 Account Statement issued by 61 M Associates to Seth Zahner.
17. 2004 Account Statement issued by 61 M Associates to Seth Zahner.
18. 2005 Account Statement issued by 61 M Associates to Seth Zahner.
19. 2006 Account Statement issued by 61 M Associates to Seth Zahner.
20. 2007 Account Statement issued by 61 M Associates to Seth Zahner.
21. 2008 Account Statement issued by 61 M Associates to Seth Zahner.

IT IS THEREFORE MUTUALLY AGREED AND STIPULATED, by and between the Trustee and David Zahner, William Meyers, Cecilia Sacharow, Kenneth Sadinoff, Perry Zahner, Seth Zahner, and Benjamin Zahner as follows:

1. The representations in the foregoing “whereas” clauses shall be deemed material to this stipulation and agreement (the “Agreement”).

2. Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i) and Fed. R. Bankr. P. 7041, the Trustee and David Zahner, William Meyers, Cecilia Sacharow, Kenneth Sadinoff, Perry Zahner, Seth Zahner, and Benjamin Zahner (the “Stipulating Defendants”) hereby stipulate that the Trustee’s claims against the Stipulating Defendants in the Adversary Proceeding are dismissed without prejudice.

3. Notwithstanding the foregoing, the Stipulating Defendants and the Trustee agree that, in exchange for the Trustee’s entering into this Agreement and dismissing the Stipulating Defendants, this Agreement shall also operate as, and is, a tolling agreement, whereby, should any court determine that the Stipulating Defendants are necessary parties to the Adversary Proceeding, or to perfect and/or enforce any of the Trustee’s claims in connection with the Adversary Proceeding, or if any of the representations in this Agreement are false, the Trustee shall be permitted to assert any avoidance and/or other claims available under the Bankruptcy Code or SIPA in connection with the BLMIS Account at issue in the Adversary Proceeding with respect to those Stipulating Defendant(s) deemed necessary by the court or who have made a false representation in this Agreement, within six (6) months of such ruling or the period provided for under section 550(f) of the Bankruptcy Code, whichever is longer, by declaration or other notice by the Trustee, notwithstanding section 546(a) of the Bankruptcy Code, and the Stipulating Defendants hereby agree to waive any statute of limitations defense in any such

actions or claims commenced by Trustee; it being understood that the Stipulating Defendants shall only be responsible for any false representations he or she has made, and not for those of another Stipulating Defendant.

4. Upon the dismissal of the Stipulating Defendants, the caption of the Adversary Proceeding is hereby amended to delete the Stipulating Defendants from the caption. The amended caption of the Adversary Proceeding shall appear as indicated in Exhibit A to this stipulation.

5. This Agreement may be signed by the parties in any number of counterparts, each of which when so signed shall be an original, but all of which shall together constitute one and the same instrument. A signed facsimile, photostatic or electronic copy of this stipulation shall be deemed an original.

[Signature Page Follows]

Dated: August 6, 2014
New York, New York

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*Attorneys for Plaintiff Irving H. Picard,
Trustee for the Substantively Consolidated
SIPA Liquidation of Bernard L. Madoff
Investment Securities LLC and Bernard L.
Madoff*

DAVID ZAHNER

By: s/ David Zahner

WILLIAM MEYERS

By: s/ William Meyers

KENNETH SADINOFF

By: s/ Kenneth Sadinoff

CECILIA SACHAROW

By: s/ Cecilia Sacharow

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*Leon Meyers, William Meyers, Leon Meyers
Trust, Kenneth Sadinoff, Harold Cohen
Living Trust, Elsa Cohen Living Trust,
Cecilia Sacharow, David Zahner, Perry
Zahner, Seth Zahner, Benjamin Zahner, and
H & E Cohen Foundation*

BENJAMIN ZAHNER

By: s/ Benjamin Zahner

PERRY ZAHNER

By: s/ Perry Zahner

SETH ZAHNER

By: s/ Seth Zahner

SO ORDERED

/s/ STUART M. BERNSTEIN

Hon. Stuart M. Bernstein
United States Bankruptcy Judge

Dated: August 11th, 2014
New York, New York

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